

1 | about what was going to be requested in the Odessa Application
2 | concerning Dr. Crouch and his compliance under the
3 | Commission's multiple ownership rules.

4 | JUDGE CHACHKIN: Well, what discussions, if any, did
5 | you have with Dr. Crouch on that subject prior to the filing
6 | of the Odessa Assignment Application?

7 | MR. MAY: I did have communications with Dr. Crouch
8 | about that, and I informed him that I looked at the policy and
9 | I felt that the policy was essentially seeking to encourage
10 | group owners like Trinity to assist minority-owned companies,
11 | and I felt that National Minority was such a minority-owned
12 | company and that therefore it would be appropriate for
13 | National Minority to seek application of this Rule 14 under
14 | the multiple ownership rules in the context of proposing to
15 | acquire this facility in Ode-- this unbuilt CP in Odessa,
16 | Texas.

17 | JUDGE CHACHKIN: What, if anything, did Dr. Crouch
18 | say to you about what you should reveal to the Commission in
19 | terms of the facts concerning the entities?

20 | MR. MAY: Dr. Crouch has always had -- I mean, he's
21 | always made it very clear to me that he wants there to be a
22 | complete and open disclosure to the Agency of all factors
23 | that, that I felt were -- or that, that should be reported to
24 | them and that he would -- frankly, he relied on me for that
25 | material, but he certainly directed that I make sure that be

1 done.

2 JUDGE CHACHKIN: Directed what be done?

3 MR. MAY: That open, full, complete di-- responses
4 to everything that the Commission asked and whatever material
5 we submitted to the Commission was, was complete and full.

6 JUDGE CHACHKIN: Well, you've already indicated that
7 you knew -- as far as you were concerned, the Commission focus
8 was on ownership, not control. So, under your interpretation
9 you didn't have to reveal any information concerning how the
10 corporations were being run because it didn't matter as long
11 as the legal ownership, legal -- was legally owned by minori-
12 ties. Isn't that what you're saying?

13 MR. MAY: Well, Your Honor, I mean to, to have it
14 clear that ownership and control, for the purposes of a non-
15 profit, are essentially the same, and that question is decided
16 by the makeup of the Board of Directors.

17 JUDGE CHACHKIN: But that's your definition. That's
18 your understanding.

19 MR. MAY: Yes, sir.

20 JUDGE CHACHKIN: I don't know what the basis of it
21 is, because doesn't the Commission -- isn't control -- doesn't
22 it make any difference whether it's run by the Directors or by
23 -- and whether its run by a commercial corporation. The
24 question still is who controls the corporation. And the mere
25 fact that a director per se doesn't have any -- doesn't --

1 isn't synonymous with control isn't --

2 MR. MAY: Your Honor, this is -- I mean, this was a
3 policy designed to create an exception for a group owner to
4 work with and assist a minority company, and in that sense it
5 just didn't occur to me that the issue of a de facto control
6 later down the road was going to somehow jump out and say:
7 you're not supposed to do this and you're not supposed to do
8 that, for example, provide accounting services or have an
9 affiliation agreement or anything along those lines. And, so,
10 I reviewed -- I, I thought that in this context, and it was
11 the first time, to my knowledge, this has ever been done, that
12 we were, we were providing the material and we were in fact
13 complying and fulfilling the very policy that the Commission
14 was inviting people to do at the time by saying: we recognize
15 the multiple ownership rules are not per se the best place to
16 provide for minority enhancement, but, but we also recognize
17 there are limitations in their ability to be able to get
18 financing and to develop the expertise, and so we would permit
19 that a group owner could have this cognizable interest and do
20 these things.

21 JUDGE CHACHKIN: Look, you know the difference
22 between having a controlling interest and having an interest.
23 Let's not play games. The fact that, the fact that a non-
24 minority was allowed to have an ownership interest doesn't
25 mean that that nonminority couldn't -- could control the

1 corporation. And, so, I don't know where you come off with
2 saying that the ownership and control is the same thing when
3 there isn't a single Commission document, as far as I know, a
4 single Commission precedent that's ever said that ownership
5 and Control are the same thing.

6 The theory of de facto control has been in existence
7 a long time and it, it existed -- case precedent existed even
8 with, with nonprofit corporations long before the exception to
9 the Commission's ownership that we're talking about.

10 MR. MAY: Your Honor, I recognize that the
11 Commission may very much disagree with Colby May's interpreta-
12 tion of it. What I'm providing you with is what I advised
13 these people about. And what I advised these people about is
14 this a brand-new policy. The Commission is encouraging group
15 owners to get involved with minority organizations. I felt
16 that this, this National Minority was such an organization,
17 that Trinity could become involved, and I did not see that
18 involvement as being precluded or specifically limited in any
19 area based upon what the Commission was trying to do.

20 JUDGE CHACHKIN: Well, I don't want to get in an
21 argument with you. All I want to know is were you directed by
22 Reverend Crouch to provide any information as to the actual
23 operation of TBN and NMTV?

24 MR. MAY: He directed me to be candid and open with
25 the Commission, and I suppose that you -- I mean, I don't, I

1 don't recall it in that specific context, but he said: Look,
2 you tell me. I'm going to rely on you, Mr. May. If this
3 policy works for us, then you do it and you submit to them any
4 and all material that you think is important or relevant or
5 that Agency ought to know, because I want them to know every-
6 thing that they're supposed to know.

7 JUDGE CHACHKIN: And it was your view that you
8 didn't have to disclose facts concerning the de facto control?

9 MR. MAY: I didn't think de facto control was an
10 issue. In fact, I thought the policy was essentially inviting
11 group owners to do just what these folks did.

12 JUDGE CHACHKIN: Go ahead, Mr. Cohen.

13 BY MR. COHEN:

14 Q In, in point of fact, Mr. May, but it was always
15 clear to you, wasn't it, that Dr. Crouch wanted to have an
16 ownership interest in as many television stations as he could?

17 A I don't know that that's accurate. I do know that
18 Dr. Crouch is a man who, based on his faith, believes that
19 essentially all of the airwaves ought to be about God's busi-
20 ness, and that's what he attempts to try to do and he lives
21 that throughout his life.

22 Q But he didn't he, didn't he tell you on more than
23 one occasion that he wanted to have an ownership interest in
24 as many stations as he could, in full-power television
25 stations?

1 A I knew that Dr. Crouch wanted to be involved in the
2 permissible number of stations that he could be involved in,
3 yes, sir.

4 Q And it was always clear to you, wasn't it, that,
5 that Dr. Ma-- that Dr. Crouch wanted to be an owner in as many
6 full-power television stations, especially serving large
7 markets, as he, as he could?

8 A Generally, yes, I think that's true. Always with
9 the understanding that it was in compliance with the
10 Commission's standards, and he certainly relied on me in that
11 regard.

12 Q Now, turn to the Portland Application, if you will,
13 and that Application was filed -- that's Exhibit -- Bureau
14 Exhibit 174, and that Application was filed in 1987 on
15 December 16th. Do you see that?

16 A I, I'm sorry. I have the --

17 Q The Portland Application --

18 A -- Odessa one. Which -- what's the number on --

19 Q It's Exhibit No. 174.

20 A I, I have Exhibit 174.

21 Q Now, before that Application was, was filed, obvi-
22 ously it had to be sent to Dr. Crouch for signature. Is that
23 correct?

24 A Yes, sir.

25 Q Do you recall discussing the Portland Application

1 with Dr. Crouch prior to or at the time it was signed?

2 A I mean, nothing specific. I mean, the same -- I
3 mean, I -- my normal process is to prepare that application
4 and to send it out to Dr. Crouch's office or to Mrs. Duff, and
5 then the application is executed and returned to me and they
6 rely on me to complete the application and then send it out to
7 them.

8 Q But your -- so, you have no recollection of, of, of
9 discussing the, the Application with Dr. Crouch either before
10 or at the time it was signed?

11 A Not specifically. I do recall that, that Dr.
12 Crouch, as well as Mrs. Duff and I, had communications inde-
13 pendent of one another that in fact National Minority again --
14 which should be entitled, in, in my feeling, under the excep-
15 tion to the multiple ownership rule.

16 Q Okay. I think you've answered my question. Do you
17 have a recollection of any discussion with Mrs. Duff about the
18 Application, the Portland Application, prior to or at the time
19 it was filed?

20 A I mean, in general terms, yes, sir.

21 Q Do you -- you -- do you have a recollection of
22 discussing the contents of the application?

23 A I mean, not, not specifically. I mean, the Appli-
24 cation was prepared and discussed. A specific line item or
25 something, I don't recall. But the general, the general

1 contents of the Application, I suppose.

2 Q Well, tell me your recollection of the, of the, of
3 the discussion you had with Mrs. Duff about the Application?

4 A Again, my normal procedure is that I would prepare
5 the application. They would look me -- to me to do so and to
6 make sure it was complete and, and accurate. I would send it
7 to them for final review and execution, and they would sign it
8 and send it back, and, and that's the kind of conversation
9 that I would have with Mrs. Duff: Did you get the applica-
10 tion? Are you going to have -- when do you think you'll have
11 it back? Et cetera.

12 Q Okay. That's fine. Let's turn to another area
13 then. I'd like you to look at paragraph 20 of your testimony,
14 and read it to yourself, if you would. Tell me when you've
15 read paragraph 20, Mr. May.

16 A Yes, sir. I've read it.

17 Q My question is, you talk in paragraph 20 about the
18 advice that you gave Dr. Crouch. Did Dr. Crouch, to your
19 knowledge, follow the advice you gave him to abstain at the
20 April 20 meeting?

21 A I believe so, yes, sir.

22 Q And did he follow your advice that he should con-
23 tinue to participate in all votes of the Board?

24 A Following the April 20 --

25 Q Correct.

1 A -- Board meeting, I believe so, yes, sir.

2 Q And have you been informed that he has indeed conti-
3 nued to participate in all votes of the Board subsequent to
4 April 20, 1993?

5 A Ye-- I believe so, yes, sir.

6 Q And do you have knowledge or information as to
7 whether NMTV has had Board meetings subsequent to April 20,
8 1993?

9 A Yes, sir. I believe they have. I know they have.

10 Q Were these meetings where minutes were kept?

11 A Yes, sir. I believe so.

12 Q And do you have knowledge as to whether NMTV elected
13 Officers in 1993, elected Officers and Directors?

14 A I don't, I don't know that I can recall any right
15 now. I believe so, but I don't, I don't know for -- I don't
16 recall for a fact.

17 Q Have you -- do you recall seeing any minutes which
18 reflected that Officers and Directors were elected in 1993?

19 A Well, I believe that -- I mean, other than this
20 April 20 meeting?

21 Q No, post-April 20. Post-April 20. Well, let me
22 just tell you. I don't want to be coy with you. We have no
23 minutes for 1993 Annual Meeting and we have no minutes that
24 any Officers or, or Directors were elected other than Armando
25 Ramirez, and he was elected at the April 20th meeting, I

1 | believe. But we have been supplied no minutes which reflect
2 | any other Officers or Directors being elected in 1993. And my
3 | question is do you have any knowledge that Officers and
4 | Directors of NMTV were indeed elected in 1993?

5 | A I, I don't know that I can recall any. I don't --
6 | there may be. I just don't know that I recall.

7 | Q And do you have any recollection of seeing minutes
8 | which reflect an election of Officers and Directors of NMTV in
9 | 1993?

10 | A Ye-- this April --

11 | Q No, post-Apr-- I'm talking about post-- well, strike
12 | that. Any time in 1993, do you have a recollection of seeing
13 | any minutes where Officers and Directors were elected other
14 | than the election of Armando Ramirez?

15 | A I don't -- I, I don't recall any.

16 | Q Now, turning back to your advice that you gave Dr.
17 | Crouch, you advised him he should con--

18 | A Could, could I also state, though, that, that with
19 | regard to the, the minutes in 1993, I think there was a
20 | specific cutoff, because I know, having been in the process of
21 | providing documents, that every, every document we had or
22 | could otherwise provide was up to the time that it was --
23 | beyond this point in time, you don't have to provide any
24 | document.

25 | Q I, I wasn't criticizing.

1 A Okay.

2 Q I wasn't criticizing you. I was just trying to find
3 out the extent of your knowledge.

4 A You'll for-- you'll forgive me for being sensitive.

5 Q No, I, I wasn't critical of you, Mr. May, at all.
6 I, I just wanted to know what you knew about this, because we
7 don't have any election of -- we have no documents which
8 reflects and election of Officers or Directors in 1993, and
9 that's why I was inquiring about it. No more -- nothing more
10 than that.

11 Turning back to the advice you gave Dr. Crouch, now,
12 you advised him that he should continue to participate in all
13 votes of the Board and, and you say, to your knowledge, he, he
14 followed your advice?

15 A I believe so, yes, sir.

16 Q And he has participated?

17 A Yes, sir.

18 Q And he has continued to function as President of
19 NMTV? Am I correct?

20 A Yes, sir.

21 Q Now, you have -- you certainly haven't advised Dr.
22 Crouch that he should cease continuing to act as President.
23 Am I correct?

24 A Other than the advice I gave post-issuance of the
25 HDO with regard to this April 20 meeting, no, sir.

1 Q Well, help me, Mr. May. I'm having a, a little
2 difficulty understanding your logic, and please help me. Are
3 not the same issues regarding NMTV's qualifications still
4 pending before the Commission now that were pending at the
5 April 20, 1993, Board meeting?

6 A Yes, sir.

7 Q Well, then, what was your basis for advising Paul
8 Crouch to continue to participate in all votes of the Board
9 subsequent to April 20, 1993, inasmuch as the same issues
10 regarding NMTV's qualifications are still pending before the
11 Commission?

12 A When the HDO was issued, I think it, it took me and
13 the other lawyers in the case that were involved a little time
14 to digest it and to look at it. I think during that period of
15 digesting it and evaluating it, because there had -- I mean,
16 now the Commission felt that this was an issue that they
17 wanted to, to look at, other than just a petitioner, I, I
18 reacted by saying look, I think maybe under the circumstances
19 it would be advisable for National Minority to have Dr. Crouch
20 abstain at this April 20 meeting?

21 Q And, and, and the reason for that?

22 A Was the issuance of the HDO and the -- and --

23 Q Which called --

24 A -- and the time we needed to go ahead and digest it
25 and to put it all into context.

1 Q Now, the HDO, according to your testimony, called
2 into question NMTV's qualifications as a minority-owned compa-
3 ny and its independence from Dr. Crouch and --

4 A Yes, sir.

5 Q -- TBN?

6 A Yes, sir.

7 Q Correct?

8 A Yes, sir.

9 Q Okay. And it was based upon that consideration that
10 you advised Dr. Crouch not to vote in April 20 -- at the April
11 20 meeting, correct?

12 A Based on the designation of issues, yes, sir.

13 Q Now, my question is aren't those -- isn't the same
14 -- aren't the same questions still pending before the
15 Commission, that is, the matter of NMTV's qualifications as a
16 minority-owned company? Isn't that issue squarely before the
17 Commission?

18 A Yes, it is.

19 Q Okay. And isn't the issue of Dr. Crouch's
20 independence NMTV's independence from Dr. Crouch squarely
21 before the Commission?

22 A As part of the issue we're dealing with, yes, sir.

23 Q Now, what I'm having trouble understanding is if you
24 thought it was prudent and conservative for him not to vote on
25 April 23 because these issues were pending before the

1 Commission, why did you advise him to vote subsequent to April
2 23 when the same issues are pending before the Commission?

3 A Because I felt that he could continue in his posi-
4 tion as the President and Director of the company and it was
5 appropriate for him to do so, and I so advised National
6 Minority.

7 Q But my question is how could you give him that
8 advice if the same issues are pending now that were pending
9 before the April 23 meeting?

10 A Well, it wasn't until the actual HDO had been issued
11 that this was an issue that the Commission was really inter-
12 ested in evaluating in the context of -- in this Miami matter
13 and issuing an HDO on it. And until we had -- I had time to
14 go ahead and digest it and to feel that I really understood
15 exactly what was at issue, I thought wait a minute, for this
16 one moment in time, look, take a freeze, don't participate in
17 the meeting, and he took the advice. I gave the best advice I
18 could. And then subsequent to that, I looked at it and said
19 jeepers, you know, you're, you're a -- an Of-- an Officer and
20 a Director of this company and I think it's appropriate for
21 you then to continue to do -- to fulfill those functions and
22 responsibilities as an Officer and a Director.

23 Q Even though the issue concerning Dr., Dr. Crouch's
24 qualifications and NMTV's qualifications are still pending
25 before the Commission?

1 A Yes, sir.

2 Q Okay. And you think that, using your terms, it's
3 prudent and conservative?

4 A Well, at, at, at the time I asked him and advised
5 him to abstain, I thought it was prudent and conservative.
6 And following that, after I'd had a chance to review it, I, I
7 believe yes, it's still appropriate advice.

8 Q And what's changed, so that your advice was for him
9 to abstain before April 23 but no longer to abstain?

10 A Just based on the ability to sit down and really
11 digest the HDO and see what it had done to the, to the materi-
12 als that had previously been filed and why I felt that this
13 issue was necessary and the facts that it relied on in that
14 context.

15 Q Now -- excuse me. Now, did you advise Jane Duff not
16 to participate in the April 23, 1998, Board meeting? And she
17 is an Officer and Director of NMTV?

18 A I, I'm sorry. You have me confused. Did you say
19 98?

20 Q If I said 98, I misspoke. 1993.

21 A No, sir. I did not.

22 Q And she has continued to direct NMTV's day-to-day
23 activities since the Designation Order was released, hasn't
24 she?

25 A Yes, sir.

1 Q And she's continued to participate in all votes of
2 the Board, hasn't she?

3 A To my knowledge, yes, sir.

4 Q And aren't the same issues raised in the Designation
5 Order concerning Mrs. Dun-- Mrs. Duff's independence? The
6 same issue that was raised about Dr. Crouch, isn't the same
7 is-- wasn't the same issue raised in the Designation Order
8 regarding her independence?

9 A No, I don't think so. I think that was one of the
10 facts, but I think that the issue was designated is whether
11 Dr. Crouch or Trinity are the parties that are essentially
12 controlling. It didn't mention Jane Duff.

13 Q And -- okay. We'll, we'll leave that the way it is.
14 I now want to turn to paragraph 22 of your testimony. And if
15 you would, read 22 to yourself.

16 A Yes, sir.

17 Q I note that your -- I think you should look at 23
18 also. I guess you should look at -- well, read 22, twenty--
19 read as much of it as you need to, 22, 23, and 24, to your-
20 self.

21 A I'm through 23. Would you like me to --

22 Q Yeah. Read 24 to yourself and then tell me when
23 you're done.

24 A Yes, sir.

25 Q Okay. Now, rendering the advice that's reflected in

1 paragraphs 22, 23, and 24, I want to ask you to tell me what
2 consideration you gave to Note 1 to Section 73.3555 of the
3 Commission's Rules, and you omitted that in your testimony and
4 I'll -- if you don't have a copy of it I'll make a copy avail-
5 able to you of Note 1. Are you familiar with Note 1?

6 A I don't know that I am.

7 MR. COHEN: Do you have a copy you can show the
8 witness? And, Your Honor, do you wish a copy of this, for
9 purposes --

10 JUDGE CHACHKIN: Do you have an extra copy?

11 MR. COHEN: Yes.

12 JUDGE CHACHKIN: Yes. Thank you.

13 MR. COHEN: This might be helpful. Would you show
14 it to the witness?

15 BY MR. COHEN:

16 Q My question, so you can focus on this, is: Note 1,
17 I'm asking you about Note 1, and my question is did you get --
18 did you give consideration to Note 1 in rendering the advice
19 that's described in your testimony?

20 A My understanding of the word "control" in the con-
21 text of this policy is as I've described it previously. I
22 don't mean that I could say I specifically looked at Note 1 or
23 that it changed my position at all.

24 Q Well, the e-- the question I want to put to you, Mr.
25 May, is did you give consideration to Note 1, which defines

1 "control"?

2 A Well, I read the report and the order, and then the
3 proposed change to the Rules, and I read it and understood it
4 to be that this is appropriate, and I don't know that I could
5 say I specifically remember reading the Notes at the time I
6 issued this advice to them then. If it was in the Report and
7 Order and then the attached Proposed New Rules at the time,
8 I'm -- I believe that I did -- would have read it.

9 Q Well --

10 A But I don't know, for example --

11 Q You --

12 A -- when this --

13 Q I want you to sa-- excuse me. Finish your answer.

14 A I mean, for example, I don't know if the Note was
15 added subsequent or not. I mean, what I'm trying to tell you
16 is that at the time I don't recall specifically focusing on or
17 bringing to mind Note 1.

18 Q Well, I, I think, and Mr. Topel will, will contra-
19 dict me if I'm wrong, I, I, I'm confident that Note 1 was in
20 the text of the Rule when you rendered the advice. And, and
21 subject to check, accept that, if you will.

22 A Okay.

23 Q And assuming that's so, my question -- all I really
24 want to know is did you give any consideration to Note 1 in
25 rendering your advice?

1 A I, I looked at the whole item. I don't know that I
2 can specifically recall saying yes or no. I looked at the
3 whole document, what it was saying, and then the New Proposed
4 Rules, and I, from that, took an understanding that I advised
5 my client on, that they could do the things that they then
6 did.

7 Q You're aware, aren't you, that Note 1 defines the
8 word "control"?

9 A Yes. It says "control" here, yes.

10 Q And it says, "The word 'control' as used herein is
11 not limited to majority stock ownership but includes actual
12 working control in whatever manner exercised." And my ques-
13 tion is did you give any consideration to that definition in
14 rendering the advise you gave?

15 A Yeah, I believe the general concept is embodied in
16 the advice I gave. The control question is determined in the
17 case of this nonprofit public charity based on the Directors
18 of the company, and those Directors dispensing their respon-
19 sibilities in generally directing the affairs of the, the
20 company, and that's working control in whatever manner
21 existed.

22 Q Did you give con-- did you give consideration to
23 Commission precedence in interpreting Note 1 regarding the way
24 the Commission has defined the word "actual working control"?

25 A I, I don't believe that I did, sir. I mean, what I

1 | looked at was a brand new policy. This was the first time it
2 | had ever been issued and come out. And, so, there was not any
3 | precedent, as it were, as to the application of this policy.

4 | Q Mr. May, are, are you suggesting to me that, that
5 | there was no Commission precedent in defining Note -- in
6 | construing and interpreting Note 1?

7 | A Not in the context of whether or not a group owner
8 | under the new Rule 14, under this Rule, could do the things
9 | that I then filed applications that these people did. That
10 | this was a brand new policy and there was no interpretation or
11 | provision with regard to what they meant. Preci-- specifical-
12 | ly, it doesn't say in here anything about a nonprofit company
13 | either in that context.

14 | Q Exactly. And, and did you, did you read any
15 | Commission cases to see whether not-for-profit corporations
16 | were treated differently than, than for-profit corporations
17 | for purposes of construing the word "control"? Did you study
18 | any of those cases?

19 | A I've been involved in cases in which the issue of
20 | nonprofit companies and their ability to get credits under
21 | Commission policies have been at issue and directors are
22 | determined to be owners. And for purposes of applying the
23 | Commission's policies, that satisfies the criteria.

24 | JUDGE CHACHKIN: Criteria for what?

25 | MR. MAY: The criteria for ownership and control, I

1 mean --

2 JUDGE CHACHKIN: Ownership?

3 MR. MAY: Like, for, for example, integration --

4 JUDGE CHACHKIN: No, wait a minute. Wait a minute.

5 I think you said, you said the criteria for ownership. But we
6 have -- the definition of "control" is not the same thing as
7 ownership, and apparently no one was written. You can read
8 that where it says specifically the Commission is distinguish-
9 ing between ownership and control.

10 MR. MAY: What -- I mean, Your Honor, not -- I don't
11 mean to be -- I mean, I've, I've made the case. I have to
12 live with the years that have gone by since I rendered the
13 advice. But the rule as it was stated at that time doesn't
14 even use the word "control" for purposes of deciding what you
15 do when you mean minority control. It says: means more than
16 50 percent owned. It doesn't say the word --

17 JUDGE CHACHKIN: Now, wait a minute.

18 MR. MAY: -- owned and --

19 JUDGE CHACHKIN: Wait a minute.

20 MR. MAY: -- controlled.

21 JUDGE CHACHKIN: I thought it does say control.

22 MR. MAY: Minority control means more than 50 per-
23 cent owned by one or more members of a minority group. So,
24 the idea that no one talks about control generally, I mean, in
25 my mind control and ownership are essentially and functional-

1 ly, in the case of this nonprofit, the same thing. And as,
2 and as long as you meet the idea of minority control being 50
3 percent owned by one or more members of a minority group,
4 that's the basis upon which I was rendering advice and upon
5 which people certainly undertook a lot of activity, for which
6 I sit here today.

7 BY MR. COHEN:

8 Q And it's your testimony that you never -- in ren-
9 dering this advice, you never analyzed Commission precedent
10 concerning definition of the word control as it -- at -- as it
11 is used for not-for-profit corporations? Is that your
12 testimony?

13 A Yes, sir. I mean, this was a new policy. There
14 wasn't any precedent defining this and what they meant by it
15 other than what they said here and what they said in the
16 memorandum opinion and order.

17 Q Was it your view, Mr. May, that the Commission was,
18 was, was simply junking 66 years of, of precedent concerning
19 the -- concerning "control" as the term is used in the Radio
20 Act and in the Communication Act, that they were just junking
21 all that precedent?

22 A Well --

23 Q Is that, is that what you're -- is that what you
24 understood?

25 A Mr. Cohen, what I'm saying is that this is a brand

1 new policy. For 66 years the Commission hasn't had a minority
2 policy in, in trying to develop mechanisms in which you can
3 engage minorities to do the kind of things that these people
4 began about doing. So, there wasn't precedent that applied to
5 that. This is a new policy that says: we are creating an
6 exception. We are creating an exception if you do these
7 particular things or these things apply. And that's precisely
8 what I tried to render my advice on. And, and -- I mean, I
9 did what I did.

10 Q Well, I gather that in doing what you did you never
11 read the case of the Trustees of the University of
12 Pennsylvania, which was a, a case in 1978 where the Commission
13 took away the license of a nonedu-- of an educational station
14 licensed to the University of the Pennsylvania -- the
15 University of Pennsylvania on the grounds that, that control
16 passed from the licensee to another entity? You never read
17 that case?

18 A That's not a case that applies to the minority
19 ownership question that we're dealing with here to my
20 knowledge.

21 Q And it's not a -- and why is that?

22 A Because this policy -- I mean, I don't know when
23 that case was decided --

24 Q 19--

25 A -- but this --

1 Q --78

2 A Okay. So, that case predates this case. I mean,
3 that case isn't otherwise relevant in this context of applying
4 this exception as it was newly initiated and enunciated by the
5 Commission. I mean, it's, it's not -- they are essentially
6 creating an exception. And if you have an exception, you have
7 an exception. And it says we will permit group owners to be
8 able to participate and have cognizable interests in minority
9 companies as long as the minority companies meet these specif-
10 ic criteria, and that criteria is that they be minority-owned,
11 and in that context --

12 JUDGE CHACHKIN: You mean minority-controlled?
13 That's what the language is specifically.

14 MR. MAY: But it defines minority control as being
15 owned, and in that sense I'm understanding "owned and con-
16 trolled" to be the same thing.

17 MR. COHEN: Well, let's go on.

18 JUDGE CHACHKIN: Wait a minute.

19 MR. MAY: I think particularly in the context of a
20 nonprofit 501(c)(3) public charity, there's no such thing as
21 "ownership" per se. It's based on the makeup of the Board of
22 Directors. And the Commission has historically applied those
23 same policies which otherwise apply to just stock companies to
24 nonprofit companies based on the makeup of its Board of
25 Directors.

1 BY MR. COHEN:

2 Q Turning to paragraph 22 of your testimony.

3 A I'm sorry, sir.

4 Q Yeah.

5 A Did you page 22 or --

6 Q No, paragraph --

7 A -- paragraph 22.

8 Q -- 22. Now, you notice there you talk about, "It
9 seemed clear to me that the use of the word 'cognizable' meant
10 that the group owner could take -- could have an active role
11 in station operations." Do you see that?

12 A Yes, sir.

13 Q Okay. Now, did you believe that the use of the word
14 cognizable meant that Paul Crouch or TBN could legally exer-
15 cise actual working control over NMTV as that term is used in
16 Note 1?

17 A No, sir. I, I understood always that the Board of
18 Directors of National Minority had to be the parties that were
19 in fact controlling and operating National Minority, and they
20 did that by coming to meetings, participating in the discus-
21 sions at meetings, voting at meetings, and generally directing
22 the policies and affairs of the company.

23 Q So --

24 A And when I looked at the word "cognizable," I under-
25 stood this word to mean that the group owner could do things